

EXPEDITED HANDLING PROCEDURE

PURSUANT TO 37 C.F.R. § 1.116

Application No. 09/544,349

Change of Inventorship

It is respectfully requested that the inventorship in this application be changed in accordance with 37 CFR 1.48(b) by deleting William C. Bornhorst, Roger X. Chen, Bill Manuel, Niclas M. Scher, Steven A. Stein and Richard A. Kuffel as the contributions of these individuals is no longer being claimed based on the cancellation of claims 9, 15, 17-21, 23, 24, 27, 32-37, 39 and 40 in this application. Therefore, the sole inventor in this application is now Steven C. Robie. The fee set forth in 37 CFR 1.17(i) is enclosed.

EXPEDITED HANDLING PROCEDURE

PURSUANT TO 37 C.F.R. § 1.116

Application No. 09/544,349

REMARKS/ARGUMENTS

The Applicant strenuously objected to the issuance of a Final Office Action in this case for at least two specific reasons which the Examiner has not at all addressed to date. The Applicant further submits that the Examiner's positions regarding the prior art status of U.S. Patent No. 6,291,008 and WO 99/41998 are incorrect in view of established case law (see, for example, Application of Land, 368 F.2d. 866 (CCPA 1966)) which states, in part, that whether the relied upon reference has more or less inventors as the application under consideration is not the main concern, but instead "The real issue is whether all the evidence including the references, truly shows knowledge by another prior to the time appellants made their invention or whether it shows the contrary..." and the question is "what disclosure is relied on in support of the rejection and who invented the subject matter disclosed." In the present case, the Examiner only acknowledges the removal of these references under the circumstances that the inventive entity of the present case has less than or the same inventors as the parent cases as this is the only example presented in the MPEP. However, the above case law, supports the Applicant's contention that the Examiner must look past the inventive entity question and determine who invented that the subject matter relied upon. This is again supported by case law which can show the inability to apply a reference to A against A + B (see Application of Blout, 333 F.2nd 928 (CCPA 1964)). A document has already been submitted that declares that the part of the references relied upon by the Examiner are the invention of Mr. Robie. Therefore, it is submitted that the Examiner should have already withdrawn the corresponding rejections.

Regardless of these controversies, the Examiner has already indicated to the undersigned that the entire case would be in condition for allowance if the claims directed to subject matter in this application which is not attributable to Mr. Robie were canceled and the inventorship changed to solely Mr. Robie as supported by the previously submitted declaration (a copy of which is re-submitted herewith). As the broadest claims in this case are clearly allowable as falling under the example set forth in the MPEP and

EXPEDITED HANDLING PROCEDURE

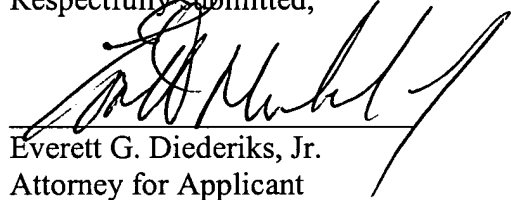
PURSUANT TO 37 C.F.R. § 1.116

Application No. 09/544,349

previously discussed with the Examiner on October 27, 2003, the remaining claims 9, 15, 17-21, 23, 24, 27, 32-37, 39 and 40 have been canceled by this amendment. A terminal disclaimer has already been filed and the fee paid for the application to address the double patenting rejection. However, a copy of the terminal disclaimer is enclosed.

Based on the above remarks, the cancellation of various claims, the inventorship change and the filing of both the Declaration by the inventor and the terminal disclaimer in this case, entry of this amendment/response and reconsideration of the allowance of the claims is respectfully requested. If the Examiner should have any additional concerns regarding the points raised herein, he is cordially invited to contact the undersigned at the number provided below to further expedite the prosecution.

Respectfully submitted,



Everett G. Diederiks, Jr.
Attorney for Applicant
Reg. No. 33,323

Date: January 26, 2004

DIEDERIKS & WHITELAW, PLC

12471 Dillingham Square, #301

Woodbridge, VA 22192

Tel: (703) 583-8300

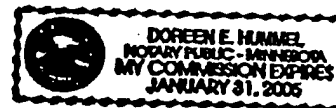
Fax: (703) 583-8301

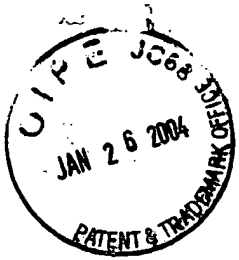
further, these statements were made with the knowledge that willful false
statements and the like are so made punishable by fine or imprisonment,
or both, under Title 18, Section 101 of the United States Code.

Steven C. Robie
Steven C. Robie

Aug 27, 2003
Date

<u>State of Minnesota</u>	(Notarization preferred but not required)
<u>County of Hennepin</u> ss.	
Before me personally appeared <u>Steven C. Robie</u> and acknowledged this instrument to be his (her) free act and deed this	
<u>27th</u> day of <u>August</u> , 20 <u>03</u> .	<u>Doreen E. Hammel</u> Notary Public
	My commission expires <u>January 31, 2005</u>





COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No : 09/544,349
Applicant : Bornhorst et al.
Filed : April 6, 2000
Title : Food Product Method of Preparation

TC/A.U. : 1761
Examiner : Corbin, A.

Docket No. : GMI5282USA
Customer No.: 27137

TERMINAL DISCLAIMER

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Your Petitioner, General Mills, Inc., a corporation of the State of Delaware having a principal place of business at Number One General Mills Boulevard, Minneapolis, Minnesota, represents it is the assignee of 100% interest in both U.S. Patent No. 6,291,008, as reflected on the face of the patent, and the above application by virtue of an assignment from each of the inventors. The assignment for the present application has been executed by the inventors but not yet submitted for recordal in the U.S. Patent Office.

Terminal Disclaimer
Serial No. 09/544,349
Page 2

Your Petitioner, General Mills, Inc., hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the above-identified application which would extend beyond the expiration date of the fully statutory term defined in 35 U.S.C. § 154 to 156 and 173 of U.S. Patent No. 6,291,008. Your Petitioner hereby agrees that any patent so granted on the above-identified application shall be enforceably only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. 6,291,008. This agreement runs with any patent granted on this above-identified application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the Petition does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §154 to 156 and 173 of U.S. Patent No. 6,291,008 in the event that U.S. Patent No. 6,291,008 expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term.

The undersigned has reviewed documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned is empowered to sign this Terminal Disclaimer on behalf of assignee.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further

that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application on any patent issuing thereon.

Respectfully submitted,



Everett G. Diederiks, Jr.
Associate Attorney for Applicant
Registration No. 33,323

Date: August 29, 2003
DIEDERIKS & WHITELAW, PLC
12471 Dillingham Square, #301
Woodbridge, VA 22192
Tel: (703) 583-8300
Fax: (703) 583-8301